

containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality.* The decision is the final decision of the SBA and becomes effective upon issuance.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

#### **§ 134.317 Termination of jurisdiction.**

The jurisdiction of OHA will terminate upon the issuance of a decision.

#### **§ 134.318 Return of the case file.**

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

### **Subpart D—Implementation of the Equal Access to Justice Act**

#### **§ 134.401 What is the purpose of this subpart?**

The Equal Access to Justice Act, 5 U.S.C. 504, establishes procedures by which prevailing parties in certain administrative proceedings may apply for reimbursement of fees and other expenses. Eligible parties may receive awards when they prevail over SBA, unless SBA's position in the proceeding was "substantially justified" or, as provided in § 134.405(b), special circumstances make an award unjust. The rules of this subpart explain which OHA proceedings are covered, who may be eligible for an award of fees and expenses, and how to apply for such an award.

#### **§ 134.402 Under what circumstances may I apply for reimbursement?**

You may apply for reimbursement under this subpart if you meet the eligibility requirements in § 134.406 and you prevail over SBA in a final decision in:

(a) The type of administrative proceeding which qualifies as an "adversary adjudication" under § 134.403; or

(b) An ancillary or subsidiary issue in that administrative proceeding that is

sufficiently significant and discrete to merit treatment as a separate unit; or

(c) A matter which the agency orders to be determined as an "adversary adjudication" under 5 U.S.C. 554.

#### **§ 134.403 What is an adversary adjudication?**

For purposes of this subpart, adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge ("ALJ"). These adjudications ("administrative proceedings") include those proceedings listed in § 134.102 (a), (i), and (j)(1), but do not include other OHA proceedings such as those listed in § 134.102(k). In order for an administrative proceeding to qualify, SBA must have been represented by counsel or by another representative who enters an appearance and participates in the proceeding.

#### **§ 134.404 What benefits may I claim?**

You may seek reimbursement for certain reasonable fees and expenses incurred in prosecuting or defending a claim in an administrative proceeding.

#### **§ 134.405 Under what circumstances are fees and expenses reimbursable?**

(a) If you are a prevailing eligible party, you may receive an award for reasonable fees and expenses unless the position of the agency in the proceeding is found by the ALJ to be "substantially justified", or special circumstances exist which make an award unjust. The "position of the agency" includes not only the position taken by SBA in the administrative proceeding, but also the position which it took in the action which led to the administrative proceeding. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding. However, upon your assertion that the position of SBA was not substantially justified, SBA will be required to establish that its position was reasonable in fact and law.

(b) The ALJ may reduce or deny an award for reimbursement if you have unreasonably protracted the administrative proceeding or if other special